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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/527,679	03/11/2005	Thomas Felzmann	4518-0101PUS1	7223
2292 7590 02/19/2008 BIRCH STEWART KOLASCH & BIRCH PO BOX 747 FALLS CHURCH, VA 22040-0747				
EXAMINER XIE, XIAOZHEN				
ART UNIT 1646		PAPER NUMBER		
NOTIFICATION DATE 02/19/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/527,679	Applicant(s) FELZMANN, THOMAS
Examiner Xiaozhen Xie	Art Unit 1646

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 09 January 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
 b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 11 February 2008. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.
 NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: 1-9 and 17-21.
 Claim(s) withdrawn from consideration: 12, 13, 15 and 16.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
 12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
 13. ☐ Other: _____.

/Elizabeth C. Kemmerer/
Primary Examiner, Art Unit 1646

Continuation of 11, does NOT place the application in condition for allowance because:

The amended claims 1, 3-5, 9, and 17-20 remain rejected under 35 U.S.C. 102(b) as being anticipated by Felzmann (2001) for reasons set forth in the previous office actions.

Applicant argues that Felzmann et al. teach maturation of DCs by co-cultivation with accessory CD40L expressing cells as a required step for inducing DCs to secrete IL-12. Applicant argues that the presently claimed tumor treatment method avoids co-cultivation of DCs with accessory CD40L expressing cells, and that the instant invention employs the LPS and IFN-gamma mediated maturation of tumor-antigen-loaded DCs. Applicant argues that consequently, the statement by Felzmann et al. (2001) regarding direct injection of DCs as tumor vaccines (page 153, left column) has a completely different character than the present invention when one considers that accessory CD40L expressing cells were used to mature DCs and were administered to the patients together with the DCs.

Applicants' argument has been fully considered but has not been found to be persuasive.

On page 150, section 3.2, Felzmann et al. used LPS and IFN-gamma for maturation of tumor-antigen-loaded DCs, and these matured DCs were able to release IL-12 (see result in Fig. 4).

Claim 2 remains rejected under 35 U.S.C. 103(a) as being unpatentable over Felzmann (2001), in view of Asavaroengchai et al.; and claims 6-8 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Felzmann (2001), in view of Rieser, and further in view of Felzmann (2000), for reasons set forth in the previous office actions.

Applicant argues that because Felzmann et al. (2001) does not teach the presently claimed tumor treatment methods for the reasons presented in the anticipation section, neither Asavaroengchai et al. (2002), Reiser (1999), nor Felzmann et al. (2000), rescue the Felzmann et al. (2001) deficiencies.

As stated above, Felzmann et al. (2001) anticipates the presently claimed tumor treatment methods. Asavaroengchai et al. (2002), Reiser (1999), and Felzmann et al. (2000) cure the deficiencies by teaching that the treatment is performed after bone marrow transplantation (BMT); and that the DCs are additionally charged with a tracer antigen that is keyhole limpet hemocyanine (KLH), or additionally charged with an adjuvant tetanus toxoid.